



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

# Virginia Law Register

---

VOL., 7, N. S. ]

APRIL, 1922.

[ No. 12

---

## ROMAN LAW.\*

---

There ought to be a more wide spread study of Roman Law or more properly, Civil Law, which underlies as a substratum, the jurisprudence of the civilized world to-day. Indeed the common law and equity jurisprudence are more largely indebted to the Civil Law than some people imagine or will allow themselves to admit. Lord Hale was an accomplished civilian and Blackstone was a civilian of more than ordinary attainments. Chancellor Kent and Judge Story, the two most noted of American legal writers, both commended in words of highest praise the civil law as the science of exact and equal justice between man and man as affecting private rights.

In the short space allotted some excerpts from the Institutes of Justinian will be presented. This book, now out of print, ought to be republished in an enlarged form and annotated according to our modern methods. Any lawyer or judge will be vastly benefitted by a close study of Justinian in connection with the Jones Edition of Blackstone. The value of these books of principles cannot be overestimated. This short article is intended to inspire this further study.

Justice is the firm and lasting purpose to give to everyone that which of right belongs to him. To the Roman lawyer the distinction between law and morals was not as clear and distinct as it is to the lawyer of our day. Jus had two meanings: one signifying law—that is the whole mass of rights and duties vouchsafed by legal remedies; or any particular right or privilege given to any one man which the law compels other people to accord to that man. A right added to one man is right subtracted from other men.

Jurisprudence is the insight into affairs human and divine; the

---

\*By C. J. Ramage, President of the South Carolina Bar Association, Saluda, S. C.

knowledge of the just and the unjust. The precepts of justice are these: to live honestly, to injure no one, and to give to each one that which is his.

There are two kinds of law—public and private: public law conserves the government of the Roman Empire; private law is for the use of men in their single or individual capacities. Both public and private law are included under municipal law—that is the law of a particular state. Private law is composed of the law of nature, the law of nations, and the civil law. Roman law appertained either to persons, things or actions.

All men are either free or slaves. Slaves are *born*, when the mother is a slave; they *become* so either by captivity, or where a free person above the age of twenty suffers himself to be sold to participate in the price. Freedmen are those who have been released from servitude imposed by law. The head of a Roman family had supreme authority over wife, children, children's children and slaves. He *only* was *sui juris*. In marriage the law required the consent of the parents. Adopted children as well as natural children were in the power of the father.

A person may adopt another as grandson, or granddaughter, great-granddaughter, although he has no son. An impotent person could adopt but a person who had been castrated could not. Women could not adopt; where a slave is adopted, he is thereby made free. The power of the father or *patria potestas* was ended: by the death of the parent; the parent or son suffering loss of freedom or citizenship; the son's attaining to certain dignities; emancipation. A son might be a soldier, senator, or a consul, and yet be in the power of his father but when he was made a patrician, he was released from this power.

Tutelage was the condition of one of tender years under the power of another called a tutor for protection. Tutors administered the affairs of their pupils and could be compelled to account by a proper action, when the pupil arrived at the age of puberty, when the pupil was freed from the tutelage. A curator was generally appointed, when a person reached the age of puberty—especially if possessed of property; the curator held his place till the adolescent reached the age of 25 years; unless, after the age of 20 in a man, and 18 in a woman the Emperor granted a special dispensation releasing the person from the

power of the curator. Persons who were of unsound mind, or who were deaf, mute, or subject to any lasting malady, being unable to manage their own affairs, were placed under curators.

Air, running water and the sea and the shores of the sea are common to mankind. All rivers and ports are public; hence, the right of fishing in a port, or in rivers is common to all men. The sea-shore, extends as far as the greatest winter flood runs up. The public use of the banks of a river is part of the law of nations, just as is that of the river itself.

All persons can bring their vessels to the bank to fasten ropes to the trees growing there, and to place any part of their cargo there. But the banks of a river are the property of those whose land they adjoin; and the trees growing on the banks belong to the same persons.

Wild beasts, birds, fishes all belong to the captor as soon as they are taken, but when these escape they are deemed to have regained their natural liberty. The first person who took the property of a public enemy was deemed the owner of the same. Things found on the seashore became the property of the finder; all that is born of animals of which you are owner becomes your property; all alluvial soil becomes yours by the law of nations; but if the violence of a river should tear away your land, it will still remain yours, but if the soil remains long enough for the trees on the detached land to take root, the property in the land is lost. When an island is formed in the sea it is the property of the first occupant.

When anything is made by one man of materials belonging to another, if the thing made can be converted back to its former crude materials, then the thing belongs to the owner of the materials, for instance a vessel cast of metal can be restored to its original element; but where the thing cannot be reconverted, it belongs to the maker, as wine, oil, etc. Where the materials belong partly to one and partly to the maker, the latter has clearly the property-right in the thing made; where one has woven purple belonging to another into his own garment, the purple though more valuable than the original garment attaches to the garment by the law of accession, yet the owner of the purple has an action of theft against the owner of the garment. Where materials belonging to two persons are mixed by common consent, the resulting mixture belongs to both in common, and the

same rule applies where the mixing is accidental. Everything built on land accedes to it. If A builds on his land with material belonging to B, B cannot recover his material so long as the building stands but by a proper action B may recover double the value of his materials, but if perchance the building is torn down and if B in the meantime has not recovered the value of his materials, he may claim them as his property. Where one builds on the ground of another, he from that time forward loses all title to the materials; the same rule applies to planting trees on the soil of another. Any writing however valuable made on the parchment of A belongs to A, no matter by whom done.

Where one is bona fide purchaser of land from one whom he believed to be the true owner, when as a matter of fact he was not, the fruits gathered, shall belong to the purchaser. He shall have the fruits gathered by him; but otherwise, where the purchaser knew better. Where a person has the right to gather fruit from land during his life time, only such fruits as are actually gathered belong to his heirs during his life time.

Treasures found on your own lands belong to you; but those found on lands of another without any express search, belong half to land owner and half to finder. TRANSFER is another method of acquiring property; where the person making the transfer is legal owner, and where he transfers the possession with the intention of passing the property thereon to another who receives it with the intention of becoming the owner. A thing sold and delivered does not become the property of the buyer till paid for, unless the seller has accepted the credit of the buyer. Where property has been previously lent to another, and the lender afterwards sells or gives the property to the borrower, the borrower immediately becomes the owner, without further delivery. Where you throw gifts to a crowd you lose title; but where property is thrown overboard during a storm, the owner does not part with title.

Corporeal things are those things which by nature are tangible as land, slaves, garments, gold, etc.

Incorporeal things are intangible as rights, inheritances, uses or obligations—rights over estates, urban and rural, which are also called servitudes. Servitudes are the rights of passage over the land of another for beasts, the right of way, the right of pas-

sage for water, which is the right of conducting water through the land of another—this applies to surface water as well as permanent running water. The larger right includes the smaller as where there is a right of driving over land, there is also the right of walking over it. Where the way was straight its width was 8 feet but where it was curved, it was 16 feet.

Servitude of urban property can be acquired as follows: right of supporting weight of adjoining house, of inserting a beam into a wall, of receiving water from a roof or a gutter, of obstructing lights, etc. Rights of this sort are effected by agreements and stipulations and can also be brought about in a testament or will. Usufruct is the right of using and taking the fruits of things belonging to others; and may appertain to all kinds of tangible property. A debtor could hypothecate property with a creditor by a simple agreement or by delivery of possession, and creditor could sell or pledge the property, or could become the owner of the property pledged by complying with certain formalities. Where there is a possession *bona fide* under a just cause of possession even as against the true owner, such possession will ripen into title as to movables in three years as to parties present and twenty years as to parties absent; things stolen or seized by violence or tainted by vice, excepted.

Possessions of buyer and seller, and of ancestor and heir can be tacked so as to ripen into title.

A donation *mortis causa* was in contemplation of the death of the giver and did not pass title if the giver survived. A donation *inter vivos* is completed when the donor has manifested his intentions whether by writing or not. Sales where property is not delivered up to a certain amount need not be registered but above that amount, must be registered. A mere agreement to give gratuitously does not bind, unless in the form of a stipulation.

When the wife passed in *manum viri* all that she had belonged to her husband; when she did not, all her property belonged exclusively to herself, and all gifts between husband and wife were prohibited.

An impossible condition is considered as not inserted at all. Where conditions are placed in the conjunctive, all must be performed; where in the disjunctive, a compliance with any one will be sufficient.

Obligations arise *ex contractu*, *quasi ex contractu*, *ex maleficio*, and *quasi ex maleficio*.

Rights arising by contract are divided into four kinds according as they are formed by the delivery of a thing, by word of mouth, by writing, or by consent. The two main sources of obligations are contracts and delicts. A contract of *mutuum* was a contract of loan, where not the thing but an equivalent was to be returned.

A contract of commodation was a gratuitous loan of a thing and the receiver was bound to exercise as great care as the most diligent *paterfamilias* takes of his property. In a deposition the person with whom a thing is deposited is only answerable if he is guilty of fraud and not for a mere fault, such as carelessness or negligence.

*Pignus* is where a creditor receives anything as a pledge from the debtor for the repayment of the debt; the creditor is required to employ his utmost diligence in keeping the thing pledged.

Everything, of which we have the property, whether it be movable or immovable, may be the object of a stipulation or contract. A mad man can go through no legal act because he does not understand what he is doing. A verbal obligation between absent persons, is void. The written acts which declare that the contracting parties were absent, shall be considered as indisputable evidence of the fact.

The contract of sale is formed as soon as the price is agreed upon, although it has not yet been paid. It is necessary that a price should be agreed upon, for there can be no sale without a price. A sale may be either conditional, or unconditional.

In a partnership unless the propositions of gain and loss have been specially agreed upon, the shares of gain and loss are equal.